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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,676	12/31/2001	Randolph S. Porubcan	24841-P004us	9039
7590	08/11/2004		EXAMINER	
Jeffrey L. Wendt 34 Drift oak Circle The Woodlands, TX 77381			SAYALA, CHHAYA D	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

HL

Office Action Summary	Application No.	Applicant(s)
	10/038,676	PORUBCAN, RANDOLPH S.
	Examiner	Art Unit
	C. SAYALA	1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 June 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-28 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

1. Applicant's election without traverse of Group I, claims 1-28 in Paper filed 6/21/04 is acknowledged.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 6-21 and 24-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 149796, CN 1141279 and Mehta (US Patent 6228806) in view of O'Donnell (US Patent 5702701) and Branly et al. (US Patent 6232270).

Both the EP and CN patent abstracts teach a fertilizer with poultry manure and humus or humic acid. The EP patent teaches the combination containing microorganisms and inorganic fertilizers with N, P and K values, as does the CN abstract. Further, the EP patent is to a granular fertilizer. The abstracts do not teach that the microorganisms are *Bacillus* spores and that the manure has been decontaminated. Mehta teaches combining organic fertilizers with microorganisms. The patent recognizes that manure is an organic fertilizer (col. 1, lines 19-22) and that the microorganism, among others taught, can be from the genera *Bacillus*. In this regard, O'Donnell also uses the microorganism *Bacillus*

laterosporus to treat soil. The many advantages are enumerated even in the abstract. Branly et al. teach at col. 5 and 6, microorganisms of the *Bacillus* genera, which includeS the species claimed herein. It would have been obvious to optimize within the teachings of these three references and pick *Bacillus* species that are advantageous over the others for use in soil treatment, not only with organic fertilizers as shown by Mehta but also with inorganic fertilizers as shown by that same patent. Note that all these patents show amounts of the microorganisms and to find the right amount for use in a soil treatment with fertilizers, would have been obvious to one of ordinary skill in the art at the time the invention was made. Many of the dependent claims are written in a product-by-process format and it is the patentability of the product and not the process steps that have been addressed, (See *In re Brown*, 173 USPQ 685 (CCPA 1972); *In re Wertheim*, 191 USPQ (CCPA 1976)).

3. Claims 5, 8, 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 149796, CN 1141279 and Mehta (US Patent 6228806) in view of O'Donnell (US Patent 5702701) and Branly et al. (US Patent 6232270) and further in view of Johnson et al. (US Patent 6174472), Moran et al. (US Patent 4459149) and Robinson (US Patent 4737287).

The primary patents are as discussed in paragraph 2. They do not teach the process steps that are couched in claims 5, 8 and 22-23. While the EP patent combines fertilizer, microorganism, manure, etc in a granular form, Johnson et al. teach the combination of fertilizer, sewer sludge and other

nutrients including the bacteria in the sludge, as a pellet. See the claims. It would have been obvious then, to combine the composition of the EP patent also in a pellet form. See the benefits at col. 3, lines 5-20. Moran et al. teach that humic acids are extracted from lignites or Leonardite (see col. 1, lines 25-35 and the preparation of the humate (col. 7, line 60 to col. 8, line 25). The benefits of humic acid is given at col. 1 and col. 3, lines 50+. Such disclosures render claims 8 and 22-23 obvious to one of ordinary skill in the art.

4. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 149796, CN 1141279 and Mehta (US Patent 6228806) in view of O'Donnell (US Patent 5702701) and Branly et al. (US Patent 6232270) and further in view of Wilson (US Patent 6312492) and Lamy et al. (US Patent 6245121).

The primary patents are as discussed in paragraph 2. They do not teach the process steps that are couched in claims 11-12. Wilson teaches the treatment of manure with sulfuric acid and drying it. See the benefits listed at col. 1, lines 55+ . For these reasons to incorporate such steps in the primary references would have been an obvious expedient. Similarly, Lamy et al. teach that in treating manure and effluents thereof, oxidizing with hypochlorite to convert it to an organic soil improver and/or fertilizer was a step that was recommended. To incorporate such a step would have required no more than ordinary skill.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See Wassinger that teaches ozone as the oxidizing agent to decontaminate manure. See Robinson at col. 1, lines 33-40 where the benefits of humus are enumerated. WO 96/28400 discusses at page 8, the benefits of the genus bacillus in composting processes to produce fertilizers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


C. SAYALA
Primary Examiner
Group 1700.